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The respective powers of the federal and local governments ...
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to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose." The act further provided that the right of the State to serve civil and criminal process of the State within said lands should always be expressly reserved in any instrument of cession issued pursuant thereto. Subsequent to the enactment of this statute the United States acquired certain lands in Nueces County for military purposes. It did not appear, however, that the Governor had ever granted a deed of cession as provided by the act. The Criminal Court of Appeals of Texas, after expressing the view that "the right to withhold consent (to purchase) altogether carries with it necessarily the right to annex such conditions as it sees fit to the giving of such consent," held that in the absence of anything in the record showing that a deed of cession had been executed by the Governor as required by the act, jurisdiction had not passed to the United States.¹¹

31. Can jurisdiction vest in the United States before title acquired? Conflicting views.—A statute of the State of Washington consented to the acquisition by the United States through donation by Pierce County of certain lands on which was established Camp Lewis Military Reservation, such donation to be evidenced by deed as therein provided. After giving such consent in terms of the Federal Constitution, the statute further authorized the United States to exercise "exclusive jurisdiction in all cases whatsoever over such tracts or parcels of land so conveyed to it, Provided, upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land shall be filed in the Auditor's office of Pierce County, together with copies of orders, deeds, patents, or other evidences in writing of the title of the United States." During the First World War a defendant was alleged to have committed the crime of murder within the Reservation. At the time of the alleged murder the deed to the land had not been accepted by the United States, but the Secretary of War, pursuant to the emergency powers granted him by the Act of Congress approved July 2, 1917 (40 Stat. 241, U. S. C., Title 50, Section 171), had entered into possession of the lands, erected buildings thereon and occupied it with 50,000 troops. The United States Circuit Court of Appeals, in reversing the action of the District Court in denying the defendant's release, followed the doctrine that all acts in derogation of sovereignty should be strictly construed, and held that "the sovereignty of the State over the tract had not then been yielded up, and was not until the deed, map, etc., were filed in the office of the county auditor of Pierce County * * *." ¹²

¹¹ *Curry v. State*, 12 S. W. (2) 796, 798, 799.

¹² *Pothier v. Rodman*, 291 Fed. 311, 321.

A different view was expressed, however, in a Montana State case, involving somewhat similar circumstances. In that case, the War Department, with the consent of the owners and prior to vesting of title in the United States, entered upon and commenced the improvement of certain lands acquired for the establishment of Fort Peck Military Reservation. The Acting Secretary of War notified the Governor of the State that the lands were in possession of the United States under agreements with the owners, and the United States, under an applicable Montana statute, had assumed "complete and exclusive jurisdiction over these lands." The Supreme Court of Montana recognized the Government's entry and possession of the land under options with the owners as amounting to a "purchase", and held that the United States had acquired jurisdiction notwithstanding title had not actually passed. The court observed, "When the United States went into possession under these options and made improvements upon the premises, it accepted the options and thereby a binding contract to purchase resulted * * *. The United States had acquired the right to possess, enjoy, and occupy the State lands, and was exercising these rights. True, the method of arriving at the price was not fully determined, nor the manner of completing the conveyance. Notwithstanding these deficiencies the United States had purchased these lands within the meaning of the word 'purchase' as used in the Federal Constitution."¹³ The court seems to have supported its conclusion upon the analogy of the rule in condemnation cases that the taking of property by the United States is complete as soon as the Government begins to carry out the project authorized.

CHAPTER V

CONSTRUCTION OF STATE STATUTES RELINQUISHING JURISDICTION TO THE UNITED STATES

32. Source of controversies regarding Federal jurisdiction.—Most of the controversies which have arisen with respect to Federal jurisdiction over lands situated within any of the several States have resulted from differences of opinion as to the meaning of language used in State statutes under which Federal jurisdiction has been asserted.

Both consent-to-purchase statutes and cession statutes usually employ words or phrases which also appear in Art. I, Sec. 8, Cl. 17 of the Constitution of the United States, and which have been given established legal meaning by the courts. For convenient reference, that provision of the Constitution is quoted in full as follows:

¹³ *State v. Bruce*, 77 P. (2) 403, 406, 407. See also, 104 Mont. 500, 69 P. (2) 97, 98.

The Congress shall have power * * * to exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may, by cession of the particular States and the acceptance of Congress, become the seat of Government of the United States, and,

To exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

33. Cession of jurisdiction, unless qualified, means exclusive jurisdiction.—Where a State statute cedes jurisdiction, without qualifying terms, Federal authority over such areas becomes complete when jurisdiction is accepted. It is not essential that the cession statute expressly indicate that exclusive jurisdiction is intended. A Nebraska statute ceding to the United States “jurisdiction over the military reservations” therein named, was interpreted by the Supreme Court of the United States as vesting the United States with “entire” jurisdiction over the reservations named, save in the matter of the right of executing process and opening and repairing roads as therein expressly reserved.¹

34. Meaning of “exclusive jurisdiction” as used in State cession statutes.—Many State cession statutes cede exclusive jurisdiction to the United States. The term “exclusive jurisdiction” as used in such statutes is recognized by the courts as being synonymous with the power to “exercise exclusive legislation”, as the latter term is used in the Constitution.² To say that the United States has acquired exclusive jurisdiction over lands within a State, means that the State has relinquished to the Federal Government all authority to enforce its own laws within such areas. In the *Mason* case,³ Chief Justice Hughes, speaking for the Court, observed “that question (of exclusive territorial jurisdiction) assumes the absence of any interference with the exercise of the functions of the Federal Government and is whether the United States has acquired exclusive legislative authority so as to debar the State from exercising any legislative authority, including its taxing and police power, in relation to the property and activities of individuals and corporations within the territory. The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise.” From this, it follows that a reservation by the State to enforce any of its own laws within a ceded area would be incompatible with the exclusive jurisdiction of the United States within such area.

¹ *United States v. Unzenta*, 281 U. S. 138, 142, 50 S. Ct. 284.

² *Fort Leavenworth v. Lowe*, 114 U. S. 525, 538, 5 S. Ct. 995; *James v. Dravo Contracting Co.*, 302 U. S. 134, 141, 58 S. Ct. 208; *Western Union Telegraph Co. v. Chiles*, 214 U. S. 274, 278, 29 S. Ct. 613; *United States v. Bevans*, 3 Wheat. 336, 387; *United States v. Wurtzbarger*, 276 Fed. 753, 755.

³ *Mason v. Tax Commission*, 302 U. S. 186, 197, 58 S. Ct. 233.

